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SINGLE BENCH

CF1002

IN THE HON'BLE HIGH COURT OF CHHATTISGARH, BILASPUR (C.G.)

WRIT PETITION (CR.) NO. 5175 /2006

PETITIONER : **Rajeev Kalia**, S/o. Late Sudarshan Kalia, aged about 32 years, R/o Chhote Attar Muda, Raigarh, District Raigarh (C.G.)

5217/06
P.R. No.
Presented by Shri Manoj Tajsuj
dated 19/9/06

VERSUS

RESPONDENT : **State of Chhattisgarh**, Through- the Secretary, Department of Law and Legislature, D.K.S. Bhawan, Raipur (C.G.)

RECEIVED COPY
19/9/06
G.A. G. BILASPUR

WRIT PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT/WRITS, ORDER/ORDERS, OR/AND DIRECTION / DIRECTIONS IN THE NATURE OF MANDAMUS, CERTIORARI, OR OF ANY OTHER APPROPRIATE NATURE.

OATH COMMISSIONER
APARNA MALVIYA
CG-2873/06

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(CR).5175.... **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	26.09.2006 Shri M.P.S. Bhatia, learned counsel for the petitioner. The petitioner has preferred this petition praying for quashing of the order dated 11.9.2006 (Annexure P-1) passed by respondent/State, by which the appointment of Shri Gurmit Singh Aahluwalia, Advocate, Bilaspur and in his absence the appointment of Shri I.P. Sharma, Advocate, Raigarh, as Special Public Prosecutor at the request of the petitioner and his mother, to conduct Sessions Trial 26/04 in the Court of Fourth Additional Sessions Judge, Raigarh on behalf of the State, has been cancelled. Learned counsel for the petitioner submits that accused persons in the case are eminent criminal lawyers of Raigarh and as such they are powerful persons who hold influence over the District Bar Association. He further submits that number of members of the Bar Association, Raigarh are likely to be examined as defence witnesses on behalf of the accused persons and thus, keeping in view the above circumstances, on the applications of the petitioner and his mother, the State had appointed Shri Gurmit Singh Aahluwalia, Advocate, Bilaspur as Special Public Prosecutor and in his absence Shri I.P. Sharma, Advocate, Raigarh, was appointed to conduct the case vide order dated 28.6.2006 and the expenses towards	

XI-HC-78

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आदेश पत्रक (पूर्वानुबद्ध)

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remuneration were to be borne by the petitioner. However, the same was subsequently cancelled vide order of Annexure P/1 without assigning any reason. It is alleged that the appointment has been cancelled on the basis of pressure created by the accused and in the aforesaid circumstances, the order of Annexure P-1 should be quashed and the counsel appointed as per Annexure P-3 should be allowed to act as Special Public Prosecutor to conduct the case.

Learned counsel for the petitioner in support of his contention places reliance on the judgment reported in Cr.C.P. (M.P.) 1995, Page No. 193 in the matter of Chhattisgarh Mukti Morcha Vs. State of M.P. and others. He further places reliance on the judgment of Division Bench of Bombay High Court (Nagpur Bench) reported in 2006 Cri. L. J. 3105 in the matter of Omprakash Baheti & Others Vs. State of Maharashtra & Others.

I have heard learned counsel for the petitioner.

In the matter of Chhattisgarh Mukti Morcha (supra) in paragraph – 8 of the judgment it has been observed that in view of Section 301(2) of the Code it is a settled law that in the proceeding the private counsel can examine or cross-examine the witnesses or even address in the manner laid down in section 301(2) of the Code, and the complainant in such a

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आदेश पत्रक (पूर्वानुबद्ध)

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situation may invite the attention of the Court. It would be the duty of the Court to see that justice does not suffer, and it would be open to the Court to act under sub-section 2 of section 301 or to allow the appointment of a counsel by the complainant for conduction of a case.

So far as grievance of the petitioner that the order of Annexure P-1 has been passed without assigning any reason is concerned, by this order the order of appointment of Special Public Prosecutor dated 28.6.2006 has been cancelled and the Public Prosecutor, Raigarh has been directed to represent the State in Sessions Trial No. 26/04. However, at this juncture without expressing any opinion, this Court observes that it would be the duty of the Court to see that justice does not suffer and it would be open to the concerned Sessions Judge to consider the prayer of counsel for the petitioner at the time of trial for permission to cross-examine the witnesses examined during trial.

With the aforesaid observations, the instant petition stands disposed of.

Consequently, M.W.P.No. 3989/06 and I.A.No. 9431/06 also stand disposed of.

Sd/-
Dhirendra Mishra
Judge

P.T.O.

Khan
27.9.06
9/12/10